OPINIONS OF RICHARD PETERS (1781-1817).

Judge Peters' opinions are particularly important in their relation to the rivalry between the Federal and State judiciaries, in which the supremacy of the former received his ardent support. They affect deeply questions of America's foreign relations and have served to distinguish, especially in the sphere of the admiralty, between the judicial and political authorities of the government. They proclaim principles and rules, continuously reaffirmed by the Federal Supreme Court, which, constraining change in the fundamental law, nevertheless assure to America's participation in maritime commerce the broadest opportunity for progressive economic legislation and equitable adjudication. The 'Armed Neutrality,' succeeded by the Napoleonic Wars, the complexities attendant upon keeping free the maritime commerce of the newly established Republic precipitated judicial questions of gravest import. The preservation of the neutrality of the United States through the exercise of inherent judicial power at common law to restrain and punish offenses against the government, as well as infractions of the laws of nations, the interpretation of treaties with neutral and belligerent maritime powers touching the freedom of commerce and navigation or extending the approved sanctions of the law of nations,[1] and the absence of precedents and statutory enactment imperatively demanded recourse to the rules of the general maritime law. Aside from their pregnant historical interest, the decisions of Judge Peters are declaratory of the fundamental principles of the American Admiralty System, directed as they were to the solution of these pressing questions. Concurred in by the greatest judges, State and Federal, of his day, sustained almost without exception by the Supreme Court of the United States, his opinions trace the great characteristic features of our maritime jurisprudence and of its relation to the general law of nations. His opinions remain a check and guide upon Congress, unalterable

[1] "The early American treaties are characterized alike by the intention to engraft into the law of nations great and new principles," Marshall, C. J., in "The Amiable Isabella," 6 Wheat. 1, 96.

truths, consistent with and approved by the Constitution of the United States and having that great sanction, the universal consent of nations.

Jay declares the Federal Judicial power to have been extended under the Constitution "to all cases of admiralty and maritime jurisdiction, because, as the seas are the joint property of nations whose rights and privileges relative thereto are regulated by *the law of nations and treaties,* such cases necessarily belong to national jurisdiction." [2] Judge Peters expresses the same thought when he holds: "The Admiralty proceeds by a law which considers all nations as one community and should not be tied down to the precedent of one nation." [3] "The maritime law," says Lord Mansfield, "is not the law of a particular country, but the general law of nations." [4] This fundamental distinction between the general law maritime and municipal or statutory regulations of commerce and navigation, is borne out in comparatively recent opinion in Great Britain: "The admiralty law of England is not the ordinary municipal law of the country." [5] "The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law." [6]

The decision in 'Jennings v. Carson' connotes the great and necessarily implied powers of the admiralty and maritime jurisdiction of the Federal Courts and their independence of precedent, whether Colonial or European. The division of the British Court of Admiralty into two sides, instance and prize, unknown both to Colonial practice in America or to the common lawyers in England before Lord Mansfield's decision in 'The Lindo and Rodney' [7] is not adhered to by Peters: "if the powers of an admiralty and maritime court are delegated by Congress to this Court, those of the prize court are mixed in the mass of authori-

[2] Correspondence and Public Papers of John Jay, Vol. III, p. 464.
[3] Jennings v. Carson, 1 Peters Adm'lty 1, 1792; aff'd. 4 Cranch 2.
[4] Luke v. Lyde, 2 Burr. 887.
[5] "The Gas Float Whitton," No. 2, 1896, p. 42, aff'd. 1897, A. C. 337 and quot., "The Gaetano v. The Maria," 7 P. D. 137.
[6] Knickerbocker Ice Co. v. Stewart, 40 Sup. Ct. Rep. 438.
[7] 2 Doug. 613.

ties with which it is invested, and requires no particular specification. They are called *forth,* if generally delegated, by the occasion; and not by repeated and new interferences of government." In civil causes one discerns a tendency to borrow more freely from foreign systems. Peters holds:[8] "If by our own *municipal laws,* there are rules established, our courts are bound exclusively to follow them. But in cases where no such rules are instituted, we must resort to the regulations of other maritime countries which have stood the test of time and experience, to direct our judgments as rules of decision." A more restrictive attitude is taken today by the Federal Courts: the maritime usages of foreign nations are not obligatory upon the courts of the United States, nor will they be respected as authority "except in so far as consonant with the well settled principles of English and American jurisprudence." [9] This modern attitude overlooks the Roman and civil law character of admiralty practice. The better, the true principle, is axiomatic: "It is only in the absence of any positive rule affirming or denying the operation of foreign laws, that courts of justice presume the tacit adoption of them by their own government unless they are repugnant to its interests." [10]

The early Continental marine ordinances constitute in America a part of the general maritime law.[11] When the determination of the admiralty and maritime jurisdiction resulted to the federal courts, little remained of the ancient jurisdictional capacity of the Court of Admiralty in England, save competency in those cases of which the common law courts could not conveniently take cognizance. It was to the practice of the courts of commercial nations generally that they had regard, and to that in England and the American Colonies, freed from the prohibitions of the common law. Federal judicial opinion in the United

[8] "Thompson, Jacobsen *et al.* v. The Ship Catharina," 1 Peters' Adm'lty 104, 1795.

[9] The Kongsli, 252 Fed. 267.

[10] Story on "Conflicts of Law," sec. 37; see also "The Armistad" (1841), 40 U. S. (15 Pet.), 518, 589; Marshall, C. J., in "The Nereide" (1815), 13 U. S. (9 Cranch), 388, 422.

[11] Benedict's "Admiralty," 4th Ed., par. 105.

States is determinative not only of the original jurisdiction of admiralty but "the bounds and limits of the admiralty jurisdiction are matters of judicial cognizance and cannot be affected or controlled by legislation, whether state or national." [12] It is a jurisdiction resting solely upon the Constitution of the United States, a cognizance which cannot be enlarged or abridged by Congress under its power to regulate commerce between the United States and foreign nations.[13] The Supreme Court admits that Congress has power to "repeal, amend or otherwise change the general maritime law," but this power, adequate to whatever may be necessary to the full and unlimited exercise of the admiralty and maritime jurisdiction,[14] is necessarily constrained by the sanctions accorded the law of nations and of the sea, and must have regard to that uniformity which the Constitution purposed the maritime law should possess.[15] When one reads the opinions on admiralty of this great Pennsylvanian, one must admit this purpose was construed by him to be international in its widest application. Judicial opinion in America, determining not only the "true limits of maritime law and admiralty jurisdiction" [16] and the line of demarcation beyond which the nations cannot be presumed to have gone in consenting to each others jurisdiction in maritime causes, should closely regard the paramount obligation of the law of nations and construe legislative enactment so as to increase the accord in substantive right, remedy and liability arising under the general maritime law.

As to the general maritime custom of Europe, agreeable in itself to the early practice in Pennsylvania, Peters comments: "I conceive that where the greater number of particular laws are coincident in general principle this will establish what is called general law." He queries: "What laws or rules shall direct or govern the decisions of maritime courts here in points in which we have no regulations established by our national legislature?

[12] "Butler v. Boston Steamship Co.," 130 U. S. 527.
[13] "The Blackheath," 195 U. S. 361.
[14] Marshall, C. J., in "United States v. Bevans," 3 Wheat. 336, 388.
[15] "Knickerbocker Ice Co. v. Stewart," 40 Sup. Ct. Rep. 438.
[16] "The Lottawanna," 21 Wall. 588.

. . . By the general law of nations we certainly are bound." [17] In 'Watson v. The Ship Neptune,' [18] he declares: "The provisions of the general maritime laws and the principles of the Roman or civil law, I am bound to respect when relevant to points before me, in decisions on the admiralty side of this court." Declaring no Federal statute touching the question to exist, he adds: "Having entered the society of nations we must therefore be regulated by the general laws which govern in maritime cases." [19] "These apply most frequently in the prize court; but there are many cases of salvage, wreck, etc. on the Instance or Civil Side of the Court, which necessarily must be determined under the general law. Where a reciprocity of decision in certain cases is necessary, the court of one country is often guided by the customs, laws and decisions of the tribunals of another in similar cases. But the change in our form of government has not abrogated all the laws, customs and principles of jurisprudence we inherited from our ancestors, and possessed at the time of becoming an independent nation. The people of the States, both individually and collectively, have the common law in all cases, consistent with

[17] The law of nations is part of "the law of the land." "The Nereide," 9 Cranch 423: "No single nation can change *the law of the sea;* that law is of universal obligation and no statute of one or two nations can create obligations for the world. Like all the laws of nations, it rests upon the common consent of civilized communities," 14 Wall. U. S. 170, 187, language quoted with approval in "The Paquete Habana," 175 U. S. 577, 711; see also 5 Fed. 622: "An act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." Marshall, C. J., in "The Charming Betsy," 2 Cranch 64, 118: The statutes of Congress must be construed, declares the Supreme Court, "in the light of the purpose of the government to act within the limitations of the principles of international law" (229 U. S., 444).

[18] 1 Pet. Adm. 142, 1800.

[19] We became responsible to other nations, declared Jay, upon the establishment of the Federal Government, "for the observance of the laws of nations;" "International law in its widest and most comprehensive sense . . . is a part of our law," 159 U. S. 112, 163. This law, declares Marshall, C. J., "is the law of all tribunals in the society of nations and is supposed to be equally understood by all." 4 Cranch 273; "It is indubitable that the customary law of nations is a part of the common law, and, by adoption, that of the United States." Hamilton's Work, Lodge Ed., Vol. V, p. 90; Duponceau writes: "The law of nations acts everywhere *proprio vigore* whenever it is not altered or modified by particular national statutes or usages, *not inconsistent* with its great and fundamental principles." "Jurisdiction, etc.," p. 3, footnote.

the change of our government and the principles on which it is founded.[20] They possess, in like manner, the Maritime law, which is part of the Common Law, existing at the same period; and this is peculiarly within the cognizance of courts invested with maritime jurisdiction; although it is referred to in all our courts on maritime questions. It is then not to be disputed, on sound principles, that this court must be governed in its decisions by the maritime code we possessed at the period before stated, as well as by the particular laws since established by our Government or which may thereafter be enacted. These laws and the decisions under them, must be received as authorities in this and other courts of our country 'in all cases of admiralty and maritime jurisdiction,' to which by the Constitution, it is declared 'the judicial power of the United States shall extend.' "[21]

In 'The United States v. Ravara,' [22] Peters holds the jurisdiction conferred by the Judiciary Act upon the Supreme Court not to be exclusive but "such as might be exercised consistently with the laws of nations, having in mind the extra-territoriality accorded to the representatives of foreign powers."

[20] Story declares that the nature and the extent of the authorities granted by the Constitution and very especially "the interpretation and exercise of the vested jurisdiction of the Courts of the United States must, in the absence of positive law, be governed exclusively by the common law." U. S. v. Coolidge, 1813, 1 Gall. 488, 25 Fed. Cas. No. 14,857; "as to such matters as were by the Constitution committed to the control of the national government, there were applicable thereto the law of nations, the maritime law, the principles of equity and the common law." Shiras, J., "Murray v. Chicago & N. W. Ry. Co.,' 1894, 62 Fed. 24, 41; "A case in admiralty does not in fact arise under the constitution or laws of the United States. These cases are as old as navigation itself, and the law, admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise," Marshall, C. J., in "Insurance Co. v. Canter," 1 Peters 511-546.

[21] The Court in "Thompson *et al.* v. The Ship Catharina," 1795, 1 Peters Adm. 104. Judge Peters comments on this decision and that of "Gardner v. The Ship New Jersey," *supra:* "The maritime laws, when clearly adopted and settled, became part of the English common law, which is retained by us to this day, in all cases permitted by the principles of our government. . . . [With reference to crime at common law he adds.] But I do not mean to enter into any controversy, as to what parts, or in what cases the common law is obligatory and directory upon the courts of the United States, having on these subjects often declared my opinion. Whatever difference of sentiment there may exist, as to its *being granted by the people*—delegated to the federal courts—or it being required that so it should be—it must be indisputably known, to all who are well informed, that without the rules and provisions as settled and made by the common law, the courts would be inoperative."

[22] 2 Dallas, p. 297, 1793.

This case was decided by Peters, Wilson and Iredell, the jurisdiction being sustained and the trial followed in the Spring Term, 1794, before Jay, Chief Justice, and Peters, Justice. Rawle insisted that the offence "was indictable at common law; that the consular character of the defendant gave jurisdiction to the Circuit Court, and did not entitle him to an exemption from prosecution agreeably to the law of nations." The Court held the offence indictable, and against the privilege set up by the defendant. In the 'United States v. Worrell' [23] Judge Peters affirms the power of the federal courts to punish under the common law, individual, as distinguished from public, offences against the sovereignty of the government, an opinion sanctioned by Jay:[24] "Of national violations of our neutrality our government only can take cognizance. Questions of peace and war and reprisal and the like do not belong to courts of justice, nor to individual citizens, nor to associations of any kind, and for this plain reason, because the people of the United States have been pleased to commit them to Congress." [25] The case was one of an indictment at common law for attempting to bribe the Commissioner of Revenue. The Court, present Chase and Peters, disagreed on the question whether the Federal Circuit Courts had power to punish under the common law for acts not expressly declared to constitute crimes by the laws of the United States. Chase declared: "But in my opinion the United States as a Federal Government have no common law; and consequently no indictment can be maitained in their courts for offences merely at the common law." Judge Peters affirmed the jurisdiction to subsist as a necessary incident of Federal sovereignty: "Whenever a government has been established I have always supposed that a power to preserve itself was a necessary and an inseparable concomitant. But the existence of the Federal government would be precarious, it could no longer be called an independent government if, for the punishment of offences of this nature, tending to obstruct and prevent the administration of its affairs,

[23] 2 Dallas 384, 1798.
[24] Correspondence & Public Papers of John Jay, Vol. III, p. 413.
[25] Jay, *ibid.* III, 474-6.

an appeal must be made to the state tribunals or the offenders must escape with absolute impunity. The power to punish misdemeanors is originally and strictly a common law power; of which I think the United States are constitutionally possessed. It might have been exercised by Congress in the form of a Legislative Act, but it may be, also in my opinion, enforced in a course of judicial proceedings. Whenever an offence aims at the subversion of any Federal institution or at the corruption of its public officers, it is an offence against the well being of the United States; from its very nature it is cognizable under their authority; and consequently, it is within the jurisdiction of this court by virtue of the 11th Section of the Judiciary Act." [26]

[26] Wharton comments: "Judge Chase's course appears to have greatly surprised, not only the party, but the community; and several years afterwards Mr. Wolcott, in a letter to Mr. King, (Gibbs Life of Wolcott, p. 73) attributes the popular doctrine of the unconstitutionality of the sedition law to what he very courteously calls the persuasions of the 'metaphysical' Virginia lawyers who led Judge Chase into the belief that the United States had no common law. But the oddest part of the case is that though Judge Chase expressly denies that there was jurisdiction and though there must have been at least a divided bench, the court 'after a short consultation' imposed a sentence of unequivocal common law stamp. The most rational interpretation is, that Judge Chase had used this 'short consultation' to acquaint himself with the views of his brethren on the Supreme Court Bench, about which, after Henfield's case, there can be no doubt." (Wharton: State Trials, p. 199.) Jay had left the Bench, but there is abundant evidence from the ruling in the case of Isaac Williams that Ellsworth held similar views. The jurisdiction was denied in "The U. S. v. Hudson," (7 Cr. 32) so far as it concerned the cognizance of the Circuit Courts of the United States, but the proceedings were *ex parte* and it still remains, in Wharton's opinion, to be determined how far that decision overrules Henfield's case. (11 Fed. Cas. No. 6,360.) Story in "United States v. Coolidge" (1 Gall. 488, 1813), like Peters, held that Congress, under the Judiciary Act of 1789, had conferred jurisdiction on the Circuit Courts over all offenses against the United States, that no legislation had narrowed that jurisdiction, and that "what those offences are depends upon the common law applied to the sovereignty and authorities confided to the United States." Marshall held in the case of "Jonathan Robins" (Oster's Pol. & Econ. Doctrines of Marshall, p. 239), "As the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and piracy under the laws of nations is of admiralty and maritime jurisdiction punishable by every nation, the judicial power of the United States, of course, extends to it." Wharton notes the difficulty "in the way of giving the Federal Courts criminal jurisdiction over infractions of treaties, or of the law of nations, and at the same time refusing them such jurisdiction over common law offences. Story indicates, however, a distinction in the two classes of cases; he says: "We have adopted the law of the admiralty in all civil causes cognizable by the admiralty; must it not also be adopted in offences cognizable by the admiralty? . . . I contend that criminal cases are necessarily included in the grant of cognizance of all crimes and offences cognizable under the authority of the United States; for crimes and offences within the admiralty jurisdiction are not only cognizable, but cog-

In 'Jennings v. Carson' (1792), Peters withheld judgment as to the question of the propriety of the District Courts' interference in a suit to effectuate the decree of the Continental Court of Appeals; while he sustained the jurisdiction, he dismissed the libel on the ground that the District Court was not authorized to compel execution. Not until 1795, in 'Penhallow v. Doane,'[27] did the Supreme Court of the United States decide that the District Courts of the United States had power to carry into execution the decrees of the Continental Congress. This decision, which was controlling upon the Federal Supreme Court in the ultimate appeal in 'Carson v. Jennings,'[28] had a decisive influence in the historic case of 'Olmstead v. Rittenhouse's Executors.' The litigation concerning Olmstead's claims to the prize monies in the case of the sloop 'Active,' which commenced in 1778, did

nizable exclusively under the authority of the United States. . . . Whatever room, therefore, there may be for doubt as to what common law offences are offences against the United States, there can be none as to admiralty." The Supreme Court of the United States does not appear to have observed this distinction. Mr. Justice Johnson admits a difference of opinion among the members of the court as to whether the circuit courts had jurisdiction over common law offences, but apprehends that, unless further arguments should be adduced, a decision in the affirmative would "draw into doubt" the decision in "United States v. Hudson," (7 Cr. 32), which was a case of libel at common law. It is important to observe that there is no intimation in the earlier decision that the Supreme Court of the United States, declared to possess jurisdiction derived immediately from the Constitution, had not cognizance of offences whether at common law, or in admiralty under the law of nations, against the sovereignty of this nation, wherein, as said by Story, the common law is "not a source of jurisdiction, but a guide and check and expositor in the administration of rights and duties and jurisdiction conferred by the Constitution and laws" (Commentaries, par. 798). Marshall, it is to be noted, refused, in his opinion in trial of Aaron Burr (4 Cranch 470, 500), to decide that "the United States, as a nation, have a common law which creates and defines the punishment of crimes accessorial in their nature." He adds "It would imply the further decisions that these accessorial crimes are not, in the case of treason, excluded by the definition of treason given in the Constitution." His decision on the motion adheres, however, to the rule of strict construction of statutes in derogation of the common law, and does not touch the larger question. It is significant that he argued in the Jonathan Robins case, where it was urged that had the federal courts been created without any express assignment of jurisdiction they could not have taken cognizance of the causes expressly allotted to them by the Constitution: "It is not admitted that, in the case stated, courts could not have taken jurisdiction. The contrary is believed to be the correct opinion." This strongly reinforces Story's argument in favor of inherent jurisdiction over offences under the law of the sea and of nations against the sovereignty and neutrality of the United States.

[27] 3 Dallas 54.

[28] 4 Cranch 2, 21.

not terminate until 1809, and is historically the most interesting case in which Judge Peters figured. Gideon Olmstead, a Connecticut fisherman, and three companions were captured by the British on the high seas off Cape Charles and carried to Jamaica. They were put aboard the Sloop 'Active' and impressed for the voyage to New York. Olmstead and his companions managed to capture the 'Active' and steered for New Jersey. Within sight of land, Olmstead's prize was seized by an armed brig belonging to the State of Pennsylvania, but not without heroic resistance. Claims in prize were instituted by the Pennsylvania authorities adverse to those of Olmstead, the Connecticut captor being adjudged entitled to but one-fourth of the prize monies. Olmstead thereupon appealed to Congress and Benedict Arnold furnished security in consideration of an interest in the proceeds of the claim. The Continental Congress, acting through an appeal commission, reversed the Pennsylvania decision, and directed the payment of the entire proceeds of the sale of the 'Active' to Olmstead and his associates. The absolute authority of the Continental Congress to decide the legality, both as to law and fact, of captures on the high seas, was not affirmed by it until March 6, 1779. In defiance of an injunction issuing from the Continental Congress, the Marshal paid the funds into the hands of the Pennsylvania Admiralty Judge, the Assembly authorizing the latter to pay the fund to David Rittenhouse, the celebrated astronomer and state treasurer, in return for which Rittenhouse gave a bond. On this bond Olmstead sued the executors of the Pennsylvania judge, recovering judgment by default. The judge's executors in turn sued Rittenhouse to the use of Olmstead upon this bond. The Supreme Court of Pennsylvania, in 1792, declined, for want of jurisdiction in admiralty in the county court, to entertain this suit. Supported by the decision in 'Penhallow v. Doane' as to the jurisdiction of the District Court, Judge Peters in 1803 (Jan. 14, 1803) granted Olmstead an order against the executrices of David Rittenhouse. "There is no doubt in my mind . . . that the process and jurisdiction of this court will reach and extend over the proceeds of all ships, goods and articles taken as lawful prize found within the district, and legally proceeded

against therein. These proceeds are under the same legal disposition and subject to the same responsibility under whatever shape they may appear, as the original 'thing' from which they were produced." For five years no process issued upon the decree entered by Judge Peters, who has been criticized by Senator Beveridge,[29] for awaiting for "prudential reasons" the mandamus of the Supreme Court, which when issued met with armed resistance. Referring to the act of the Pennsylvania legislature authorizing the payment of the funds in dispute into the state treasury, Judge Peters declared: "As to the jurisdiction, I have never conceded that the allegation on this point contained in the Act of the Assembly last mentioned had legal foundation . . . yet if your honorable court shall be of opinion that the objections to jurisdiction are relevant, I shall, agreeably to my duty, continue to withhold any further proceedings. But, if, on the other hand, a peremptory direction to execute the decree shall be the consequence of your deliberation, having now the whole case before you, there can be no order or direction which it is my legal obligation to obey to which (impelled by a sense of justice, however I may regret the circumstances, as it respects the parties respondent, or other consequences which may flow from it) I shall more cheerfully submit."

Apprehensive of bloodshed, the Pennsylvania Governor appealed to Madison, who replied that the President was not authorized to prevent the execution of a decree of the Supreme Court, but was especially enjoined by statute, wherever any such decree was resisted, to aid in its enforcement. The arrest of the executrices and suing out of a writ of habeas corpus led the Supreme Court of Pennsylvania, in a well reasoned opinion, to declare the federal courts, the successors to the admiralty jurisdiction of the Continental Courts. Thus terminated a struggle destined, not only to establish the exclusive competence of the federal courts in admiralty causes according to the known processes of the Civil Law, but to refer that great jurisdiction to the general law of nations.

[29] Life of John Marshall, Vol. IV, p. 19.

The decision of Judge Peters in 'Findlay v. The Ship William' [30] has numerous aspects of recent interest. It presents a case of the capture of a British vessel by a French privateer, the owners claiming in prize against her French captors. The libel was dismissed by Peters on the ground that the District Court was without jurisdiction. It is important to observe that, when the case was decided, the extent of the territorial coastal jurisdiction of the United States had not been determined by any national act and the circumstances of the case were wholly novel, the *locus* of the capture not being clearly ascertainable by the court. A plea to the jurisdiction was made that "by the law of nations" (to which the treaty with France was said to be conformable) "a neutral nation has no right to be the judge, either of the lawfulness of the war between belligerent powers or of their conduct towards each other in the prosecution of hostilities." The libellants answered that this was not the issue; but rather, the violation and invasion of neutral rights. Judge Peters concludes: "I have not seen any proofs that 'the laws and customs of nations' warrant the interference of this court. If they do not, no authority can be derived from our laws if they were not silent on the subject" . . . "It is true that, by the laws and customs of nations, the capture, if taken in neutral bounds, is no lawful prize. But I do not see how this court can get at that circumstance, without holding plea as to the lawfulness of the prize. The instance side of this court seems to have other objects (than the remedy for the invasion of territorial rights of the United States); and a Prize Court, called into activity when a nation is at peace, appears to be a solecism in jurisprudence." On this latter point he is overruled by Chief Justice Jay in 'Glass v. The Sloop Betsy,' [31] who held that the District Courts of the United States possessed the powers of courts of admiralty whether sitting as an instance or as a prize court, "competent to inquire, and to decide, whether" (in a case of neutral prize made on the high seas) "restitution ought to be made . . . that is whether such restitution can be made

[30] 1 Peters Adm'lty. 12; June 21, 1793.
[31] 3 Dallas 6.

consistently with the laws of nations and the treaties and laws of the United States." Story in 'The Santissima Trinidad,' [32] however, sustains Peters in substance. "In the case of capture made within a neutral territorial jurisdiction, it is well settled, that, as between the captors and the captured, the question can never be litigated. It can arise only upon a claim of the neutral sovereign asserted in his own courts or the courts of the Power having cognizance of the capture itself for the purpose of prize." [33] He admits that, as to the facts in the case of the 'Santissima Trinidad,' the practice had been different for thirty years; that it was then too late to see precedent in the analogy. In this judgment he foreshadows the decision in 'The Appam.' [34] There the Supreme Court of the United States held: "the violation of American neutrality is the basis of jurisdiction, and the admiralty courts may order restitution for violation of such neutrality." It is noteworthy that the Supreme Court, relying on Judge Story's opinion in 'The Santissima Trinidad' quotes the dictum above cited, and this leads to opinion that there exists an exception to, or limitation of, the broad rule asserted, and that Judge Peters in 'Findlay v. The Ship William' is not overruled.[35]

What more comprehensive verdict upon the reputation of this great Pennsylvanian, or more splendid eulogy than the words of Joseph Story: "It is a high and brilliant fame, founded in solid learning and strengthened by wisdom and integrity. I have learned much from his school, and owe him many thanks for his rich contributions to the maritime jurisprudence of our country." [36]

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[32] 7 Wheat. 283, 1822.

[33] See also Story, "Principles and Practice of Prize Courts," Prall Ed. 1854, Eng., p. 21, citing 5 Rob. 15, the "Vrow Anna Catharina"; 3 Rob. 162, note.

[34] 243 U. S. 124, 1917.

[35] See Story in "The Anne," 3 Wheat. 435; 101 U. S. 42.

[36] "Life & Letters," Vol. I, p. 540, Aug. 30, 1828.